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United States Senate

COMMITTEE ON
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WASHINGTON, DC 20510-6250

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June 8, 2017

President Donald J. Trump
The White House
1600 Pennsylvania Ave, NW
Washington, D.C. 20500

Dear President Trump:

We were pleased that your Administration's recently released budget proposal recognized the need to improve the permitting process for major infrastructure projects. As the co-sponsors of the Federal Permitting Improvement Act, which was enacted into law last Congress as Title 41 of the Fixing America's Surface Transportation Act (FAST-41), however, we are concerned that your Administration is not making use of important tools Congress has given it to accomplish this goal.

The budget correctly notes that *"the legal requirements and processes for the permitting and review of major infrastructure projects have developed in a siloed and ad-hoc way, creating complex processes that in some cases take multiple years to complete."* And, furthermore, that *"[d]elays and uncertainty in project review timelines can affect critical financing and siting decisions [and] postpone needed upgrades, replacements, or new development."* We could not agree more strongly that the federal government needs to make timely and coordinated decisions regarding permits, and those same concerns drove us to author FAST-41. This bipartisan effort gave the federal government tools to streamline and improve the federal permitting process, which, as you have noted, is laden with uncertainty that hinders investment, economic growth, and job creation.

Through FAST-41, we sought to improve the permitting process for major capital projects across all sectors in three ways: better coordination and deadline-setting for permitting decisions; enhanced transparency; and reduced litigation delays. Despite deep divisions in other areas, we were able to come together to create a smarter, more transparent, better-managed process while not altering substantive public input or safeguards that exist in the review process.

Since Congress enacted FAST-41, however, neither the past Administration nor your Administration has realized the Federal Permitting Improvement Steering Council's (FPISC) potential. It took President Obama seven months to appoint an Executive Director, and FPISC barely got off the ground before the election. And now, given the Administration's stated interest in facilitating the permitting process and infrastructure development, it is perplexing that the Administration has not taken full advantage of the powerful tools Congress gave it in FAST-41 to accomplish those goals. Moreover, Executive Order 13,766, Expediting Environmental

Reviews and Approvals for High Priority Infrastructure Projects, issued on January 24, 2017, appears to duplicate or conflict with many of the permit streamlining provisions in FAST-41. That executive order directs the Chairman of the Council on Environmental Quality (CEQ)—a position that has not yet been filled—to identify “High Priority Infrastructure Projects” and to coordinate with the appropriate agency heads to clarify deadlines for such projects. While these are important tasks, FAST-41 already requires FPISC and its Executive Director to identify similar covered projects and to then work across all government agencies to set timetables and to ensure that they are met. We have heard from numerous stakeholders that the executive order is confusing and makes the permitting process even more complex—the exact opposite result of what seems to have been intended.

Moreover, we are increasingly concerned that the Administration’s failure to appoint a permanent Executive Director is significantly impairing the ability of FPISC to achieve its mission of greater coordination across government. We have heard from a number of entities involved in FPISC-designated covered projects that a lack of clear leadership from the top has hampered cross-agency efforts and allowed permit siloing to continue.

Therefore, we ask that you expeditiously fill the role of FPISC Executive Director and clarify how CEQ’s role can complement rather than conflict with FPISC’s statutorily-mandated responsibilities.

We thank you for your attention to this critical issue and look forward to working with you on efforts to improve the federal permitting process so that we can deliver a smarter, faster, and more responsive government to the American people.

Sincerely,



Rob Portman
Chairman
Permanent Subcommittee on Investigations



Claire McCaskill
Ranking Member
Senate Committee on Homeland Security &
Governmental Affairs